

**BOARD OF FORESTRY AND FIRE PROTECTION
PROFESSIONAL FORESTERS REGISTRATION**

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Website: www.bof.fire.ca.gov/licensing/licensing_main.html**RPF/LTO Responsibilities**

August 20, 2015

Problem Statement:

Issues arise when Registered Professional Foresters (RPFs) do not complete their field work correctly and thoroughly, putting the Licensed Timber Operators (LTO) in a position to be cited by CALFIRE for violating the Forest Practice Rules (FPRs). In some cases LTOs are being issued violations for following incomplete or inaccurate field work that was performed by a RPF. The RPF should be held responsible for their work, along with any ramifications that occur if their work is not performed correctly.

Potential Non Regulatory Solution:

The development of a written correspondence, which may include:

- a) Policy (careful not to cross the line into regulation by infringing upon ones rights or govern an agency's procedure)
- b) Letter or Memo to Department from Board
- c) Memorandum of Understanding (Chairman and Director)

The written correspondence could include the following tenets:

- 1) CAL FIRE shall work with ACL and CLFA to integrate the licensed professionals into the ongoing training efforts. The Board will recognize and support that fact that this is currently happening and emphasize continued development of this relationship through consistent interaction and participation in
 - a. Basic Forest Practice
 - b. Forest Practice Enforcement Training
 - c. Workshops focused on rule implementation
- 2) To emphasize the importance of a cooperative review of Department policies as they relate to the inspections and issuance of violations by CAL FIRE staff and leadership of ACL and CLFA. This would allow ACL and CLFA to provide their membership a better understanding of the process that is utilized by the Department and the opportunities that the regulated public have to request additional Department review on violations that they feel may be inequitably issued.
- 3) Encourage the voluntary use of the pre-operation checklist by the LTO community.

- 4) Request that the Department, ACL and CLFA report back to the Board in an approximate 2 year timeline on how the identified problem has been addressed through these cooperative efforts.

Comment [WU1]: This timeline could be narrowed to a specific point in time to provide when the Department would report back to the Board.

Potential Regulatory Solution:

Board staff has identified two separate recommended regulatory solutions for consideration. Each of these solutions entails potential regulatory revisions to the same sections of the existing FPRs, but the second option would provide for a regulatory exception of LTO responsibility for timber operations where the RPF did not accurately complete the identified preparatory work associated with a Plan. The other option would be fully reliant up the discretion of the Department to determine when the LTO would be responsible for timber operations and when he or she is not responsible for timber operations.

Option #1:

Amend 14 CCR § 1035.3 Licensed Timber Operators Responsibility

(d) Comply with all provisions of the Act, Board rules and regulations for timber operations, the applicable approved plan and any approved amendments to the plan.

Comment [WU2]: "timber operations" added to provide consistency with 14 CCR 1022.4. A plain English reading of this regulatory standard within the recommended revision could indicate that LTO are responsible for all FPR. This is somewhat tangential to the problem, but is recommend by staff for purposes of consistency. This revisions occurs in both options.

Amend 14 CCR § 1035.1 Registered Professional Forester Responsibility

(e) A RPF retained by the plan submitter to provide professional advice throughout timber operations, or their designee, shall, prior to the commencement of operations or upon taking responsibility of a Plan, perform an on-site inspection of the Logging Area to ensure the preparatory work is accurate and in conformance with the approved Plan.

Comment [WU3]: This language was developed to further increase the RPF responsibility, particularly in regards to fieldwork. This language is contained in Option 2 as well.

Option #2:

Amend Definitions 14 § CCR 895.1

Preparatory Work – means those activities required to be performed by a Registered Professional Forester (RPF), or their designee, in a Logging Area prior to operations, or upon assuming responsibility of a Plan, which include flagging, marking or otherwise identifying silvicultural prescriptions, watercourses, archaeological resources, special treatment areas, location of proposed roads or landings, or other areas requiring operational restrictions as identified in an approved Plan or approved amendments to a Plan.

Comment [WU4]: Potentially use "Plan Area" and "Logging Roads" in lieu of Logging Area. The active tense of the definition of Logging Area may not suit the needs of the regulatory revision. This comment applies to Option 2 as well.

Comment [WU5]: The term preparatory work is a term that is selected from PRC 4527 and therefore may be appropriate for Board consideration of clarification through the development of a definition. This definition is required for Option 2 for the purpose of clarifying the "exception language" that is added to the potential revisions of 1035.3(d).

Amend 14 CCR § 1035.3 Licensed Timber Operator Responsibility

(d) Comply with all provisions of the Act, Board rules and regulations for timber operations, the applicable approved plan and any approved amendments to the plan, except that a LTO shall not be held responsible for violations that result from inaccurate or inadequate Preparatory Work completed by the responsible RPF, or their designee.

Comment [WU6]: This is the exception language that was developed to clarify that an LTO cannot be held responsible for timber operations when he or she is following poor preparatory work that was conducted by an RPF.

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Conclusion:

Staff recommends that the PFEC consider the above provided recommendations with the thought that these potential actions are not mutually exclusive. Any single recommendation, or combination thereof, could be included in a formal recommendation from the PFEC to the Forest Practice Committee to address the problem at hand. In addition, the PFEC does have the ability to accept, deny or modify any of staff recommendations, or develop a completely autonomous approach to be forwarded to the FPC for consideration.